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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

Amendment to the Commissions Rules)
Regarding a Plan for Sharing) WT Docket No. 95-157
the Costs of Microwave Relocation) RM-8643

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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December 1, 1995

No. of Copies rec'd 44
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SUMMARY

For the FCC to meet its broad policy goals of an orderly relocation of existing 2 GHz licensees to higher bands in the most advantageous and least disruptive manner to microwave incumbents, and the rapid development of and the introduction of emerging technologies, such as PCS, the Commission must clarify its rules regarding PCS microwave relocation.

CTIA supports cost-sharing rules that create a clearinghouse mechanism to administer the costs and obligations of PCS licensees that benefit from the spectrum-clearing efforts of other licensees. Such rules, however, should also permit parties to individually negotiate cost-sharing arrangements.

In addition, the bargaining power of microwave incumbents and PCS licensees must be equalized by creating incentives for microwave incumbents to relocate during the voluntary negotiation period. The FCC should develop clear and concise rules regarding the requirement to negotiate in "good faith" during the two-voluntary negotiation period, as well as maintaining the requirement during the one-year mandatory negotiation period. The FCC should also clarify

the definition of "comparable facilities" which must be provided to microwave incumbents. The term should mean equivalent, but not identical facilities, and should not require absolute technical equivalence.

Further, the FCC should clarify its rules that incumbents are not entitled to return to their 2 GHz original position. Finally, the FCC should cease issuing co-primary microwave licensees in the 2 GHz band.

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association
("CTIA")¹ hereby submits its comments on the *Notice of Proposed
Rulemaking* in the above-captioned proceeding.²

INTRODUCTION

In the *Notice*, the FCC proposes a plan for sharing the costs
of relocating microwave facilities operating in the 2 GHz band
which has been allocated for use by broadband PCS providers. The
Commission also seeks comment on the appropriate definition of
"good faith" negotiations during the mandatory negotiation period

¹ CTIA is the international organization of the wireless
communications industry for both wireless carriers and
manufacturers. Membership in the association covers all
Commercial Mobile Radio Service ("CMRS") providers, including
cellular, personal communications services, enhanced specialized
mobile radio, and mobile satellite services.

² *Notice of Proposed Rulemaking*, Amendment to the Commission's
Rules Regarding a Plan for Sharing the Costs of Microwave
Relocation, WT Docket No. 95-157 and RM-8643, FCC 95-426,
released October 13, 1995 ("Notice").

and the appropriate definition of the "comparable facilities" which PCS licensees must provide to microwave incumbents during the mandatory negotiation period. In addition, the Commission seeks comment on whether it should cease issuing co-primary status to microwave licensees in the 2 GHz band.

BACKGROUND

In 1993, the FCC reallocated 220 MHz of spectrum between 1.85 and 2.20 GHz to accommodate the development of emerging technologies, such as PCS.³ In the Emerging Technologies proceeding, the FCC established a comprehensive framework for the relocation of existing microwave incumbents from the 2 GHz band.⁴ The plan provides for separate relocation policies for frequencies used for both licensed and unlicensed services, as well as for public safety entities. For licensed services, the Commission established a two-year period that commenced with the acceptance of applications for new technologies, during which time negotiations are encouraged, but seemingly are not

³ *Notice of Proposed Rulemaking and Tentative Decision*, GEN Docket No. 90-314 and ET Docket No. 92-100, *First Report and Order*, FCC 93-329, released July 23, 1993.

⁴ *In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking ("First Report and Order")*, ET Docket No. 92-9, RM-7981, and RM-8004, FCC 92-437, released October 16, 1992, 7 FCC Rcd 6886 (1993).

required.⁵ This period has been termed the "voluntary" negotiation period, and began on April 5, 1995 with the acceptance of the A & B broadband PCS license applications.⁶ Following the two year "voluntary" negotiation period, there is a one-year period for "mandatory" negotiations between the fixed microwave licensee and the emerging technology licensee.⁷

The Commission's plan is based on three principles: (1) to relocate and accommodate the existing 2 GHz microwave facilities in a manner that would be most advantageous to them; (2) to avoid disruption of the services provided to the public by the existing 2 GHz providers; and (3) to foster the introduction of emerging technologies services.⁸

To protect the interests of the incumbent microwave licensees, the FCC sought to create relocation rules that balance the needs of the incumbent 2 GHz fixed microwave licensees with

⁵ In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *Third Report and Memorandum Opinion and Order* ("Opinion and Order"), ET Docket No. 92-9, RM-7981, and RM-8004, FCC 93-351, released August 13, 1993, 8 FCC Rcd 6589 at ¶ 2.

⁶ Notice at ¶ 12. The Wireless Bureau also stated that negotiation periods for C, D, E, and F blocks will be announced in the future by public notices.

⁷ *Id.*

⁸ *First Report and Order*, 7 FCC Rcd 6886 at ¶ 4; and *Opinion and Order*, 8 FCC Rcd 6590-91 at ¶ 4.

the needs of the emerging technology providers.⁹ The FCC believed that the relocation process would operate in a fair, equitable, and orderly manner. However, some microwave incumbents are taking advantage of the relocation rules, and thus necessitates the instant proceeding.

III. ARGUMENT

A. The Cost-Sharing Proposal Should Not Preclude Independent Negotiations Among PCS Licensees

In the Notice, the FCC seeks comment on a proposal to permit PCS licensees to share their costs of relocating microwave incumbents from adjacent frequency blocks and license areas. Such a mechanism is needed because the PCS licensing scheme overlaps the incumbent microwave licenses. Therefore, to clear spectrum for PCS, a PCS licensee may need to move a microwave incumbent from PCS bands and markets that are adjacent to the band for which the PCS licensee holds an FCC license.

To facilitate the relocation of microwave incumbents, the FCC proposes a cost-sharing plan. This plan addresses the situation where PCS licensees in adjacent bands and markets benefit from the efforts of a licensee who must relocate incumbent microwave users from adjacent PCS bands in order to clear its own band. An essential element of the FCC's plan sets

⁹ *Opinion and Order*, 8 FCC Rcd 6592 at ¶ 8.

the reimbursement cap at \$250,000 per microwave link, with an additional \$150,000 cap if construction of a tower is required. The FCC's cost-sharing proposal also grants interference and reimbursement rights to a PCS licensee who, in order to relocate microwave incumbents from its own spectrum, also must relocate the incumbent from adjacent bands. Finally, the FCC proposes a clearinghouse mechanism to administer the costs and records related to the relocation of each microwave link.

CTIA supports the Commission's proposal. The experience to date indicates that PCS licensees' efforts to relocate microwave incumbents often requires clearing spectrum outside of one PCS license area. In response, many PCS licensees, including AT&T Wireless, WirelessCo., PhillieCo. PCS PrimeCo, and GTE, voluntarily have entered into a cost-sharing plan that establishes by contract the criteria for cost reimbursement.

Pursuant to this voluntary agreement, all parties participate equally in reimbursement costs, with the exception of costs that exceed \$250,000 per link. To be eligible for reimbursement, relocation costs over \$250,000 must directly relate to the cost of relocation and may not include a "premium" payment to the microwave incumbent.¹⁰ This private, market-based

¹⁰ In addition, relocation costs will not be shared equally where a party relocates a microwave link that is not co-channel with its own.

agreement validates the appropriateness of the FCC's proposal to make premium payments non-reimbursable.

CTIA also strongly supports the adoption of a cost-sharing plan that incorporates a clearinghouse mechanism, and which sets forth the reimbursement obligations of the PCS licensees who benefit from the spectrum-clearing efforts of others. Cost sharing mechanisms must be created, either by agreement among the affected entities or by the Commission, to facilitate the orderly relocation of microwave incumbents. Without such arrangements, the development and deployment of PCS services will be delayed, and the public will be denied the benefits of PCS services.

During the pendency of this proceeding, the FCC has granted broadband PCS licenses in the "A" and "B" spectrum blocks, thus removing some, but not all uncertainty as to the identity of the PCS licensees affected by the relocation of microwave incumbents whose licenses cross PCS bands and PCS markets. In addition, many PCS licensees, especially those with a "Pioneer's Preference," have proceeded to clear spectrum without waiting for cost-sharing rules to be adopted in an effort to bring new services to the public. In this proceeding, the Commission should be careful to construct rules that recognize the efforts of these PCS licensees, and should not preclude or penalize a PCS

licensee for clearing spectrum and voluntarily entering into market-based cost-sharing arrangements.¹¹

B. "Good Faith" Negotiations Should Be Required During the Voluntary Negotiation Period

The FCC asks whether it should clarify the definition of "good faith" negotiations during the mandatory negotiation period. The Commission tentatively concludes that an offer by a PCS licensee during the mandatory period to replace a microwave incumbent's system with comparable facilities constitutes a "good faith" offer. Conversely, failure to accept an offer of "comparable facilities" creates a rebuttable presumption that the microwave incumbent is acting in "bad faith."¹²

CTIA agrees that the Commission should take this opportunity to clarify the definition of "good faith" negotiation, and reassert the duty of the incumbent licensees to negotiate in "good faith" during the voluntary negotiation period.

Under the current rules, microwave incumbents have a strong incentive to refuse to negotiate with PCS licensees during the

¹¹ In addition, the Commission should take care to protect the confidentiality of commercially sensitive information that should not be shared by PCS competitors. For example, both the dollar amount a PCS licensee has paid to clear spectrum in a market area, and the proposed location of a licensee's transmitters (and thus its network architecture and service area), are commercially sensitive and competitively valuable information that should not be disclosed to competitors.

¹² Notice at ¶ 69.

two-year voluntary negotiation period in order to buttress their efforts to extract a premium for their FCC-mandated relocation. The Commission has created this imbalance by creating rules that do not clearly require negotiations during the voluntary relocation period.

The Commission should clarify its rules so that throughout the voluntary relocation period, microwave incumbents are subject to the same "good faith" requirement imposed upon them during the one-year mandatory negotiation period. Strengthening the requirement of "good faith" negotiations during the voluntary period is consistent with the Commission's goal in ensuring rapid deployment of PCS services to the public.

The imbalance that is created by the current rules greatly favors microwave incumbents to the disadvantage of PCS licensees. The attached summary of actual negotiation demands demonstrates that microwave incumbents are seeking to enrich themselves beyond any legitimate amount by demanding payments from the PCS licensee that exceed 5-6 times the actual cost of relocation.¹³

¹³ Since the FCC rules appear to permit an incumbent to delay negotiations through the entire voluntary negotiation period, many licensees fear retribution and retaliation should they publicize this extortion, further delaying their introduction of new wireless services. Therefore, to permit PCS licensees to reveal these instances of "bad faith" negotiations, while maintaining their anonymity, CTIA has masked the identity of the parties. The attachment summarizes some of these actual demands. See Exhibit I.

CTIA has urged the Commission to clarify the obligations of parties to negotiate in "good faith" during the voluntary negotiation period.¹⁴ The Commission should find that the "good faith" standard includes, *inter alia*, the absence of malice and the absence of seeking unjust enrichment beyond actual relocation costs by taking unconscionable advantage of a PCS licensee's need to relocate the incumbent.

The Commission should adopt other incentives that will provide both the PCS licensees and the microwave incumbents with appropriate incentives to relocate sooner, rather than later. CTIA supports the approach adopted by the Canadian government whereby microwave incumbents that have not reached agreement within the initial two-year voluntary negotiation period are responsible for all of their relocation costs during the involuntary period. Further, the Commission should penalize parties that fail to negotiate in "good faith" by revoking their license and terminating their rights to be relocated to new spectrum. Moreover, the FCC should establish rules which declare that demands by microwave incumbents that exceed twice its costs are *prima facie* unreasonable and are evidence of "bad faith" during the mandatory negotiation period.

¹⁴ Petition for Rulemaking Regarding a Plan for Sharing the Costs for Microwave Relocation, RM 8643, Letters from CTIA, Thomas E. Wheeler to FCC, Reed Hundt, September 22, 1995, and September 27, 1995.

To date, the majority of microwave incumbents have been willing to negotiate in good faith. Unfortunately, however, some incumbents persist in making exorbitant and unreasonable demands. The FCC should use this proceeding to clarify that its rules require an orderly and expeditious relocation process.

C. The Definition of "Comparable Facilities" Should Be Clarified

The FCC should clarify the definition of "comparable facilities" which must be provided to microwave incumbents. While the Commission has declined to define the term "comparable facility," (stating that it wanted to provide parties with the flexibility to negotiate mutually agreeable terms for determining comparability¹⁵), the Commission has stated that it will look at three factors to determine whether the new system is comparable to the microwave incumbent's existing facility: (1) communications throughput; (2) system reliability; and (3) operating costs.¹⁶

In order to reduce ambiguity, the Commission should provide greater specificity by stating that the term "comparable facilities" shall mean "facilities whose overall quality is equal

¹⁵ *Opinion and Order*, 8 FCC Rcd 6589 at ¶¶ 35-36, citing *Notice* at ¶ 70.

¹⁶ *Notice* at ¶ 74.

within a reasonable range so that both voice and data users will perceive no qualitative difference between the original and replacement facilities." The definition should not, however, require absolute technical equivalence. A similar definition of comparability is incorporated in the "equal access" provisions of the *Modification of Final Judgment*, and has been quite successful in measuring the quality of telecommunications services provided over equivalent but not identical facilities.

CTIA agrees that "premium payments" should not be recoverable, and to eliminate the incentive of microwave incumbents to thwart the negotiation process by making excessive demands to receive upgrade replacement facilities that far exceed reasonableness, recoverable relocation costs during the mandatory negotiation period should be limited to the undepreciated cost of an incumbent licensee's existing system.¹⁷

D. Microwave Incumbents Are Not Entitled to Return to Their Original 2 GHz Band Location, and the FCC Should Cease Issuing Licenses in the 2 GHz Band

The Commission asks whether it should clarify its rules that allow relocated microwave licensees a twelve-month trial period to ensure their new facilities are comparable. According to the

¹⁷ Petition for Rulemaking Regarding a Plan for Sharing the Costs of Microwave Relocation, RM 8643, Letter from CTIA, Thomas E. Wheeler to FCC, Reed Hundt, September 25, 1995.

current plan, the twelve-month trial period will toll from the date that the microwave incumbent commences service in the relocated spectrum.¹⁸ In addition, the Commission asks whether microwave incumbents that are still operating in the 2 GHz band on April 4, 2005 (the date that the FCC has tentatively concluded to limit PCS licensees' obligation to provide comparable facilities) should be prohibited from retaining primary status, or should they be given secondary status.¹⁹

The Commission reasons that the purpose of the twelve-month trial period is to ensure that microwave incumbents have a full opportunity to test their new systems under "real-world" operating conditions. In addition, the Commission requires that if the new system does not perform comparably to the old system or pursuant to terms agreed upon between the microwave incumbent and the PCS licensee, the PCS licensee must either cure the problem, restore the microwave incumbent to its original frequency, or relocate the incumbent to an equivalent 2 GHz frequency.²⁰

CTIA agrees that microwave incumbents are entitled to comparable facilities, however, the "comparable" requirement does

¹⁸ Notice at ¶ 83.

¹⁹ *Id.* at ¶ 85.

²⁰ *Id.* at ¶ 84.

not inherently afford incumbent carriers the right to retain 2 GHz spectrum. Thus, microwave incumbents are not entitled to be returned to their original position if they are not satisfied with the relocated position. To allow incumbents the right to retain their original position in the 2 GHz band seriously jeopardizes the deployment of broadband PCS services. Just as we have seen a reluctance from some microwave incumbents to fairly negotiate relocation terms, this requirement affords incumbents additional leverage to further stall or thwart the relocation process. Moreover, such a requirement is unnecessary and burdensome. Pursuant to the current rules, microwave incumbents are given a "full opportunity" to test their new systems during a year-long testing period.²¹ This testing period is created to allow incumbents sufficient time to determine whether the new systems are comparable to their existing ones.²² Once the microwave incumbent relocates to the new system, PCS licensees will be able to complete the engineering of their systems and begin deploying PCS services to the public. Therefore, to allow incumbents the privilege of requiring PCS licensees to return them to their original 2 GHz band position, may create gaps in service areas, and interfere with the provision of PCS service.

²¹ *Id.*

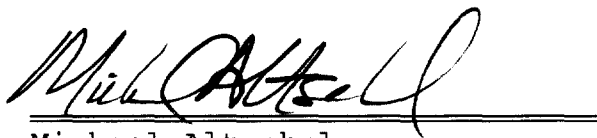
²² *Id.*

Similarly, CTIA maintains that the rights of the 2 GHz microwave incumbents must be tolled on April 4, 2005 and that the FCC should cease issuing new co-primary microwave licenses in the 2 GHz band. The continuation of such licensing is a breach of faith to the PCS license winners that have invested, to date, nearly \$8 billion to provide the next generation of wireless services. PCS licensees must be assured that their provision of services will not be compromised by the continual grant of co-primary licenses in the 2 GHz band.

III. CONCLUSION

For the foregoing reasons, the Commission should clarify its rules regarding the relocation of existing 2 GHz microwave incumbents to accommodate the rapid deployment of broadband PCS services to the public.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael Altschul", is written over a horizontal line.

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EXHIBIT I
Summary of Microwave Relocation "Bloody Shirts"

Many PCS licensees have been reluctant to identify 2 GHz microwave incumbents that are abusing the public trust of their licenses by making unconscionable demands as a precondition to the relocation of their facilities. This reluctance on the part of PCS licensees is due to a fear of retribution. In many cases the incumbent microwave licensee is also a governmental entity from which PCS licensees must seek important zoning and other permits essential to their businesses. In other cases, the incumbent will obtain revenge simply by further delaying any resolution. With one exception (see the first example), the following list of instances of misconduct by microwave incumbents invokes a "ski mask", that is, it shields the identities of the parties involved as a way to protect PCS licensees from retribution. This "masking" was applied by an accounting firm that collected the examples of incumbent wrongdoing. By way of background, of the 22 incumbents, 7 are government entities, 3 are publicly-traded corporations, 4 are public utilities, 4 are public safety organizations and 4 are unknown.

- Incumbent, Suffolk County Police Department, Suffolk County, New York, states that it is in possession of 21 paths. According to Columbia Spectrum Management (CSM), the Incumbent is in possession of 13 paths, six or seven of which exist in the PCS spectrum. The PCS licensee has found only one path that affects its frequencies. The Incumbent, however, wants its entire system relocated with a digital upgrade and has demanded "\$18 million dollars to consummate the negotiation in a timely manner." CSM indicated that it has received the Incumbent's address information for mailing the check. See attached facsimile.
- Incumbent has a twenty-link network and the two PCS licensees have identified nine links with co-channel interference. The Incumbent has requested that its entire network be upgraded from existing analog to digital, including the required new digital channel multiplexers and a new simulcast system that would be integrated into the new all digital network. The Incumbent also stated that it is looking at a four-year process to complete the network upgrade. A preliminary estimate to upgrade their system is around \$17 million. The actual cost to relocate only the potentially interfering links is approximately \$1.5 million for an analog solution.
- Incumbent wants a cash buyout of 34 analog links and one digital link. The Incumbent wants compensation for 5 links that were relocated in 1993 and for 4 links that will not interfere, but are part of its network. This Incumbent initially valued its links at \$1,200,000 per link if relocated by 12/31/95 and \$1,000,000 per link if relocated by 3/31/96. In a subsequent meeting, the Incumbent reduced the cost per link to \$347,000 (within this cost per link are two very questionable elements: \$55,000 per link for overload costs and \$60,000 per link for undepreciated book value). At the Incumbent's rate, the total cost to buyout 35 links is \$12,145,000. The Incumbent's request will require the PCS licensee to pay a premium of \$6.9 million (assuming relocation of 38 links at \$347,000 per link). The PCS licensee will interfere with only 29 links and estimates a cost of \$5,200,000 (\$179,300/link) to relocate these 29 links.

- Incumbent has 14 links (1 digital and 13 analog) that the PCS licensee will need to relocate. The Incumbent's total system is comprised of 20 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at \$2,800,000 (\$200,000 per link). The Incumbent wants an upgrade of all 20 links to digital at no cost to the Incumbent and to resolve any technical issues associated with its simulcast as well as absorb all cost required to modify their simulcast network. The Incumbent's analysis indicates a cost of at least \$10 million to relocate and upgrade the 20 links, not including any simulcast costs. The Incumbent's request will require the PCS licensee to pay a premium of over \$7 million.
- Incumbent has 4 analog links that will interfere with the PCS licensee's system. The PCS licensee estimates the cost to relocate the 4 links on a comparable basis at \$760,000 (\$190,000 per link). The Incumbent, after retaining a consulting firm to represent them in any negotiations, wants a cash buyout of its facilities and will coordinate relocation. At the first meeting with the Incumbent and its agent, the PCS licensee made an offer of \$800,000 to relocate the 4 links. The Incumbent representative rejected the offer because he did not consider it a "bonafide offer." Neither the agent nor the Incumbent would divulge the amount of money required to relocate their links. At the second meeting, the PCS licensee again requested from the Incumbent the amount of money that it was demanding for its 4 links. The Incumbent indicated that it was not prepared to respond at that time. In a subsequent telephone conversation, the Incumbent's agent indicated that the Incumbent required \$4-5 million compensation and that the Incumbent wants the PCS licensee to pay all consultant costs (\$250,000). The Incumbent's request would require the PCS licensee to pay a premium of \$3-4 million.
- Incumbent claims to have 8 links working, but the PCS licensee discovered that 4 links are not in service. The PCS licensee estimates the cost to relocate to comparable facilities at \$1,500,000 for 8 links (\$187,500 per link) and \$750,000 for 4 links. The Incumbent wants a cash buyout and will coordinate its own relocation. Initially, the Incumbent was unwilling to meet with the PCS licensee. After numerous calls and a letter, the Incumbent finally agreed to meet. The Incumbent indicated that its 8 links were worth between \$400,000-\$600,000 per link and refused to accept a lower offer. Assuming a price of \$500,000 per link, the cost to relocate the Incumbent's 8 links would be \$4,000,000. The Incumbent would also require the PCS licensee to pay a premium of \$3,250,000.
- Incumbent is asking for cash. They want \$1 million per link. The analog replacement to the conflicting links is estimated at \$200,000 per link.
- The PCS licensee has identified 8 analog microwave links for relocation in one MTA and 3 analog microwave links in a second MTA. The Incumbent has refused to allow site visits or to provide any site or system information not already available in the public domain. The Incumbent indicated that it wished to negotiate a cash settlement for the relocation and that it would engineer and price the replacement system. Based on limited Incumbent system information, the PCS licensee estimates the cost for a 6 GHz replacement system at \$1.2 million for 11 links (\$109,091 per link) and presented this to the Incumbent. This proposal was contingent on the Incumbent clearing 5 links by year-end 1995. The Incumbent

countered with a proposal of \$9 million for 14 links, based on 5 links being fully attributable to the PCS licensee and 9 links with costs shared in some manner between the PCS licensee and the Incumbent. The Incumbent's price includes links which have not been identified as subject to interference. In addition, the Incumbent proposed a one-year schedule for replacement with a \$500,000 bonus to be paid by the PCS licensee for each month, or part thereof, for earlier completion. The Incumbent promised, but has not yet provided, details on the existing systems and a breakdown of its buy-out price. The Incumbent's lack of cooperation has resulted in delay to replacement system negotiation.

- The Incumbent, a public utility cooperative, has a system comprised of 78 paths of which 25 are 2 GHz and 25 are 6 GHz. The PCS licensee offered to relocate 2 of the 25 paths in the 2 GHz band for relocation. The Incumbent has indicated that it wants to coordinate relocation of all 78 paths, changing complete routes rather than one path at a time as well as an upgrade of all paths to digital. The Incumbent expects the PCS licensee to pay for its entire system relocation and the upgrade. The Incumbent has indicated that it wants to negotiate relocation and upgrade to digital of all paths prior to proceeding any further and will not allow site surveys until negotiations have begun. If negotiations are not satisfactory, the Incumbent will turn negotiations over to UTC.
- Incumbent has 14 links (11 digital, 3 analog) that the PCS system will interfere with. The Incumbent's total system is comprised of 23 links. The PCS licensee estimates the cost to relocate the 14 links on a comparable basis at \$2,800,000 (\$200,000 per link). The Incumbent wants its entire network (all 23 links) upgraded to digital at no cost to the Incumbent and wants the PCS licensee to pay for outside consultant costs to evaluate the PCS licensee's offer. The Incumbent estimates the cost to upgrade their entire system at \$4,600,000 and will require the PCS licensee to pay a premium of \$1.8 million.
- Incumbent has requested that the three PCS licensees operating in their spectrum buy their entire twenty-seven link network, even though there are only fourteen links which have the potential for co-channel interference. The amount of compensation they seek is to be the cost to entirely replace and upgrade this system to digital plus an undetermined "incentive multiplier".
- The Incumbent, a municipality, has a system comprised of 12 paths, seven of which are in the 2 GHz band. The PCS licensee has offered to relocate services for two of these paths. This Incumbent's system is used for public safety and city administrative communications. It carries traffic to three remote radio sites. It plans to simulcast and upgrade to digital. The Incumbent has dark fiber already in place, which may be part of their upgrade. The Incumbent is also talking to other Incumbents to see what they are doing and has indicated that it will drag out negotiations for the full time allocated unless it gets what it wants. The Incumbent has also indicated that it will probably hire consultants to represent them in negotiations. The Incumbent is looking for complete replacement of its existing system with hybrid radio-fiber digital system while maintaining system integrity. The Incumbent will try to get the PCS licensees to pay for the entire upgrade and is very aware of the PCS auction and "their rights" as defined by the FCC.

- The PCS licensee has submitted a contract for the relocation of eleven of the Incumbent's twelve 2 GHz paths using 6 GHz analog radios (the last path is a path that another PCS licensee is interested in). The Incumbent, a municipality, is unwilling to accept this like for like offer. The Incumbent stated that it views the PCS relocation issue as a substantial opportunity for receiving a digital upgrade at the expense of the PCS licensees. The Incumbent also stated that it had nothing to lose by holding out up to the full 5 year period for a complete systemic digital upgrade. The Incumbent stated that it did not have a particular vendor preference, but that it is seeking at least a DS-3 capacity replacement system. The Incumbent added that it was broke and would not be able to offer any money towards the purchase of the proposed digital system. The Incumbent stated that it felt that the PCS licensee would ultimately offer it a digital replacement system, because of the timeline and the Incumbent's willingness to hold out for five years. The Incumbent stated that it preferred to have a single relocation, but does not mind having separate relocation agreements with the two PCS licensees involved.
- Incumbent has seven links in the 2 GHz band, two of which has been identified by the PCS licensee for relocation. The Incumbent will not permit site inspections based on the argument that they "...do not appear appropriate or necessary for negotiations conducted during the voluntary negotiating period." The Incumbent further argues "...that determining the cost of comparable facilities is, in our view, relevant during the involuntary negotiation period." In addition, the Incumbent wants to have its seven links addressed instead of only the two links identified as interfering, and wants digital replacement for existing analog systems.
- At the initial meeting between the Incumbent, a public utility company, and the PCS licensee, the PCS licensee said that it was interested in 4 paths (a request for a 5th path has been added since this meeting). The Incumbent stated that it was willing to negotiate for the relocation of the affected paths. The Incumbent stated that it would accept a cash payment to migrate two of the paths onto its fiber system. For the remaining two paths, the Incumbent expects to receive compensation equal to the cost of a digital upgrade. It also expects compensation for any additional paths impacted by the digital upgrade. The PCS licensee would have the choice of migrating the additionally affected paths to digital, or pay for the additional back-to-back channel banks needed for the digital to analog transition. The Incumbent stated that it would receive "comparable" compensation from the PCS licensee at the end of the 3 year negotiating period and therefore it "deserved" a premium for the early relocation of their system. The Incumbent also stated that it would not consider analog replacement because it has a long term plan to eventually migrate to digital and added that it currently had no money budgeted to pay the difference between an analog and digital replacement system. The Incumbent stated that it was particularly concerned with potential downtime, and that it would insist on a hot cutover. It also stated a preference to replace the current radios with SONET digital radios. The Incumbent stated that it could meet the PCS licensee's timeline if the price was right.
- The Incumbent is a public safety entity and is well aware of the leverage that the position affords them. Currently, it has a 600 channel analog system which is operating at two-thirds

of its capacity. If the PCS licensee does not provide it with a DS3, 6 GHz replacement system, the Incumbent is prepared to wait for the full time frame its public safety classification affords them. A sixteen T-1 digital replacement system, a considerable upgrade, would be about one-half the cost of the requested DS3 system.

- Negotiations have been ongoing since April. The Incumbent has the second largest network that is fully contained in the PCS licensee's market and will need to be relocated. The Incumbent initially wanted a SONET replacement system, well beyond what could be considered a comparable replacement. In the most recent negotiation, the Incumbent included in its requirements that the PCS licensee also relocate its 6 GHz analog links. In addition, the Incumbent has not allowed site surveys and due diligence review of its network. Without the surveys and review, the PCS licensee cannot accurately assess comparable replacement.
- The Incumbent is not a public safety entity, but it has the largest network that the PCS licensee must relocate. The Incumbent is requesting that if the PCS licensee wants to relocate faster than within three years, the PCS licensee will have to pay for aerial fiber. The Incumbent has retained two UTC consultants.
- The Incumbent's system is a large multi-link, multi-MTA system in the PCS band with additional links in the 2.1 GHz band. Ten of its "PCS band" links are in the PCS licensee's market, only one of which is co-channel to the PCS licensee. The Incumbent's strategy is that the more links a PCS licensee is willing to relocate, the better the per link cost. It is also seeking reimbursement for links in the 2.1 GHz band. The Incumbent stated that if a PCS licensee wants it to relocate prior to the three-year FCC stated time frame, a premium would be required.
- The Incumbent, a commercial enterprise, has a system that is comprised of 159 paths (Incumbent says there are less than half that number). Twenty-seven of these paths are analog 2 GHz. The PCS licensee has identified two paths of interest (other PCS licensees have identified a total of 11 paths of interest although these were not yet disclosed). The Incumbent is only interested in a systemic relocation and indicated that if the offer was nothing more than a comparable replacement, then the next negotiation meeting would be a very short one. Once a contract is signed, the Incumbent said that it could migrate the system within 90-180 days. In exchange for their early relocation, the Incumbent wants a cash incentive to move, otherwise it will hold out until the involuntary relocation period. The Incumbent would not articulate the amount of compensation it was looking for, but said it would be willing to entertain offers of resources other than cash if that was of interest to the PCS licensees. The PCS licensee raised a concern of the Incumbent's inability to relocate 27 paths to microwave facilities in such a short timeline. The Incumbent did indicate that on some paths it would be looking for microwave, but that many paths would utilize other facilities. It is the PCS licensee's feeling that the Incumbent is most likely looking to get out of microwave. Several years ago, the Incumbent put the system up for sale. When it realized that there was money to be made through microwave relocation, it took the system off the market. Once the Incumbent sells the frequencies, it will most likely sell the sites and equipment. The

Incumbent is interested in other sources of ongoing revenue and very open to discussing co-location with any PCS licensee.

- **Incumbent is seeking compensation of \$500,000 for two links located in the 2 GHz frequency, but not carrying any traffic. Since the links are idle, there is no potential interference and the FCC should cancel the license. No compensation should be demanded where there is no true "incumbent".**
- **Incumbent is in possession of one microwave link that will need to be relocated. Incumbent wants to negotiate a cash settlement for this microwave link even though it was taken out of service in 1994 as part of an office downsizing. The PCS licensee asked the Incumbent to send a copy of the letter that it sent to the FCC advising that the system had been taken out of service and that it had, in fact, relinquished the frequencies. The PCS licensee has followed up with the Incumbent via facsimile on numerous occasions requesting this written confirmation, but has not received any response to its request. As a result, there is no indication that the Incumbent had ever sent a letter to the FCC.**
- **One PCS licensee is negotiating with 14 incumbents, having 102 microwave links. Although only four of the incumbents are being difficult, they have 65 links, accounting for almost two-thirds of the links that need to be relocated.**